

January 24, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

REPORT ON HIV COMMISSION MEMBERSHIP AND STAFFING

On November 19, 2002, on a motion by Supervisor Knabe, your Board instructed the Auditor-Controller, Director of Health Services (DHS), County Counsel and my office to report back in 30 days with: 1) a proposed amendment to the County Code allowing Office of AIDS Programs and Policy (OAPP) staff to serve only as non-voting members on the Commission on HIV Health Services (Commission); 2) findings and recommendations on whether Commission memberships can be changed to eliminate the appearance of conflict, including reducing the size of the voting membership; and 3) specific recommended plans to provide the Commission by the start of 2003-04 with a staff that is independent of OAPP.

This memo summarizes our recommendations, based on our evaluation of federal and State laws and regulations, and existing County ordinances governing the Commission's structure, membership and duties, as well as follow-up discussions with Auditor-Controller, DHS, and County Counsel staff who concur with these recommendations. A more detailed discussion is provided in the Attachment.

Non-Voting Commission Members

As instructed by your Board, County Counsel has drafted the proposed ordinance amendment, which was approved for introduction on January 21, 2003. This change provides that the County's ordinance be amended to require all OAPP staff appointed to the Commission to serve only as non-voting members. Since OAPP is directly responsible for conducting the solicitation and monitoring process of the

resulting contracts with HIV/AIDS providers, we believe that this change addresses the perceived conflict of interest for individuals serving on the Commission which establishes HIV/AIDS funding priorities.

Additional Changes to Commission Membership

While we have discussed potential changes to the current membership of the Commission, additional time is needed to provide the Board with a more detailed analysis regarding the membership composition. This is, in part, due to the complexity of determining a commission membership that would fully represent all demographic groups, while reducing the membership size and maintaining certain stakeholder groups or agencies that could represent the interests of the HIV/AIDS population. Therefore, we are requesting an additional 90 days to respond to this issue, as identified in the motion.

Commission Staffing Recommendations

We recommend that the Commission be provided with support staff independent of OAPP and included in the budget of the Executive Office of the Board of Supervisors. This will address concerns that the Commission's planning process should operate independently from the contracting process managed by OAPP. Since the support staff costs are an allowable expense under the CARE Act, these costs will continue to be covered by DHS. Other Commissions/Committees, such as the Children's Planning Council and the Countywide Criminal Justice Coordination Committee, operate similarly with staff budgeted in the Executive Office and costs covered by the affected County departments.

My office will work with the Executive Officer and her staff, as well as DHS and Department of Human Resources staff and the Co-Chairs of the Commission, during the 2003-04 budget process, to identify the number and level of staff needed to support the Commission's operations, and to incorporate these as new positions in the Executive Office 2003-04 budget.

If you have questions or need additional information, please call me or your staff may contact Gregory Polk of my staff at (213) 974-1791.

DEJ:DIL

GP:bjs

Attachment

c: Executive Officer, Board of Supervisors

County Counsel

Auditor-Controller

Director of Health Services

Co-Chairs, Commission on HIV Health Services

REPORT ON HIV COMMISSION MEMBERSHIP AND STAFFING

As instructed by the Los Angeles County Board of Supervisors on November 19, 2002, this report addresses: 1) a proposed amendment to the County Code allowing Office of AIDS Programs and Policy (OAPP) staff to serve only as non-voting members on the Commission on HIV Health Services (Commission); 2) findings and recommendations on whether Commission memberships can be changed to eliminate the appearance of conflict, including reducing the size of the voting membership; and 3) specific recommended plans to provide the Commission by the start of 2003-04 with a staff that is independent of OAPP.

Statutory Guidelines for Commission Membership

The federal Ryan White Comprehensive AIDS Resources Emergency (CARE) Act requires that to be eligible for funding the County must establish an HIV health services planning council and mandates that it include representatives of:

- (A) health care providers, including federally qualified health centers;
- (B) community based organizations serving affected populations and AIDS service organizations;
- (C) social service providers, including providers of housing and homeless services;
- (D) mental health and substance abuse providers;
- (E) local public health agencies;
- (F) hospital planning agencies or health care planning agencies;
- (G) affected communities, including people with HIV disease and historically under served groups and subpopulations;
- (H) nonelected community leaders;
- (I) state government (including the state medicaid agency and the agency administering the program under Part B);
- (J) grantees under subpart II of part C;
- (K) grantees under section 2671, or, if none are operating in the area, representatives of organizations with a history of serving children, youth, women, and families living with HIV and operating in the area;
- (L) grantees under other federal HIV programs, including but not limited to providers of HIV prevention services; and
- (M) representatives of individuals who formerly were federal, state, or local prisoners, were released from the custody of the penal system during the preceding three years, and had HIV disease as of the date on which the individuals were so released.

Federal law states further that any member of the Commission may not be directly involved in the administration of a grant or may not designate particular providers as recipients of any of the funds provide in the grant.

Existing County ordinance specifies membership and responsibilities for the Commission which are based on these CARE Act provisions. The ordinance precludes the Commission from being directly involved in the administration of grant funds or in the selection of funding recipients. However, federal law requires the Commission set priorities for the County's expenditure of CARE Act funds. As such, County Counsel has advised that all members of the Commission may participate in the priority setting process. Further, County Counsel has advised that, providing the Commission complies with the limitations set forth in federal law and County ordinance, the conflict of interest laws would not apply.

Non-Voting Commission Members

County Counsel indicates that the members designated in the County Code, but not in the CARE Act may be made non-voting members, at the discretion of the Board. The Board has no discretion to delete a member mandated by the CARE Act, or to amend the County Code to make that person a non-voting member. The Board could reconstitute the Commission membership as long as the representatives required by the CARE Act are included.

The CARE Act also specifies that local public health agencies be represented and the County Code states that nominees of both DHS' Director of Public Health Programs and Services and DHS' Director of OAPP serve on the Commission. The federal Health Resources and Services Administration has recently indicated that the CARE Act neither requires nor prohibits OAPP from serving on the Commission.

Since the Commission is responsible for establishing priorities for spending CARE Act funds, certifying that CARE Act funds are spent in accordance with the priorities set forth by the Commission, and reviewing the mechanisms used by OAPP to administer these funds, the County Code regarding Commission membership should be amended to provide that OAPP staff appointed to the Commission serve only as non-voting members. Given that OAPP is directly responsible for conducting the solicitation and monitoring process of the resulting contracts with HIV/AIDS providers, this change in voting privilege should address the appearance of a conflict regarding funding priorities. By continuing to serve as Commission members, albeit non-voting, OAPP staff could still provide vital input regarding funding priorities and other related areas.

Other Changes to Commission Membership

The October 9, 2002 Auditor-Controller's report found that approximately half of the Commission's 49 members, who are not County employees, are affiliated with agencies that provide HIV/AIDS services under contract with the County. This finding led to the recommendation to evaluate whether the Commission membership can be changed to address this perceived conflict of interest.

County Counsel has consistently advised that inclusion of funding recipients on the Commission does not constitute a legal conflict of interest, providing the Commission exercises only the authority provided to it by federal law and complies with the limitations set forth in the County Code. Specifically, federal law mandates the Commission's involvement in setting priorities for the County's distribution of Ryan White Comprehensive AIDS Resources Emergency (CARE) Act funding. However, both federal law and the County Code prohibit members from being involved in the selection of specific providers or funding recipients.

County Code Section 3.29.030 specifies that the 49 members of the Commission are individually nominated for appointment by the Board members, stakeholder/advocacy groups, community agencies (including service provider groups), and public agencies. Each group and agency can make one nomination to the Commission for a total of 39 of the 49 members; Board members have two nominations per office for the remaining 10 Commissioners. County Code does not specify guidelines for these nominating groups to use in selecting their representatives.

Due to the complexity of determining a Commission membership that would fully represent all demographic groups, while reducing the membership size and maintaining certain stakeholder groups or agencies that could represent the interests of the HIV/AIDS population, an additional 90 days is requested to provide a more in-depth analysis for Board consideration.

Given the need for additional review beyond the time available for this response, additional membership changes are not recommended at this time. However, it is recommended that this issue be reviewed further by the Auditor-Controller, DHS, Chief Administrative Office (CAO) and County Counsel and report those findings to the Board.

Commission Staffing Recommendations

Presently, OAPP staff provides support to the Commission. Although this may appear to be conflict of interest for OAPP to staff the Commission, County Counsel's review indicates that no legal conflict exists.

After reviewing the support staff functions that OAPP provides for the Commission, it is recommended that the Commission support be incorporated into the budget of the Executive Office of the Board of Supervisors. This will address concerns of federal officials, indicated in the Auditor-Controller's October 9, 2002 report, that councils, such as the Commission, should have their own staff independent of the local health department HIV/AIDS unit to ensure that the council's planning process is independent of the contracting process managed by the local HIV/AIDS unit.

Since the support staff costs are an allowable expense under the Ryan White CARE Act, these costs will continue to be covered by DHS. Other Commissions/Committees, such as the Children's Planning Council and the Countywide Criminal Justice Coordination Committee, operate similarly with staff budgeted in the Executive Office and costs covered by affected County departments.

The specific number of staff and the appropriate classifications will be developed by staff of the Executive Office, Chief Administrative Office, Department of Health Services (DHS) and Human Resources, as well as the Commission Co-Chairs, and submitted for Board approval during the 2003-04 Budget process.

Conclusion

In summary, County Counsel has prepared an amendment to the County Code to provide that OAPP staff appointed to the Commission will serve only as non-voting members. Additionally, it is recommended that the support staff of the Commission be included in the Executive Officer's 2003-04 budget. Further action on other changes to the Commission membership will be deferred for 90 days and a report will be prepared by the Auditor-Controller, CAO, DHS, and County Counsel for the Board's consideration.